

**Notice of Allowability**

Application No.

10/743,528

Examiner

Jerrold Johnson

Applicant(s)

ESLAMBOLCHI ET AL.

Art Unit

3728

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to fax RCE request dated 25 April 2007.
2. ☒ The allowed claim(s) is/are 1-3 and 6-18.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.  
*Second Inventor did not sign*
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

The dependency of claim 6 is changed from 4 to 1.

### **REASONS FOR ALLOWANCE/INTERVIEW SUMMARY**

The following is an examiner's statement of reasons for allowance as were agreed to during the telephone interview of 24 April 2007:

Reasons for allowance:

The prior art of record reference to Mykleby US 4,029,206, in his background, page 1, lines 45-55, as well as in col. 4, lines 49-53, describes a prior art protective cover for a reel of optical fiber cables using rigid pieces of foam blocks constructed from Dow Ethafoam 220 mounted on a fabric backing (fiber material). The foam blocks are glued or sewn on the fabric.

In addition to the base reference disclosure of Mykleby, the Examiner has found *general* teachings for overlapping insulation blocks (albeit not in protective covers for optical fiber cables, nor in wrapped protective covers of any type), and has found *general* teachings for providing pockets within which elements disposed on a wrapping cover can be placed (again not in protective covers for optical fiber cables, nor in wrapped protective covers of any type). The examiner believes that applying either of

these general teachings individually to the reference to Mykleby is appropriate under 35 U.S.C 103(a), and has indicated this in the previous office actions. This conclusion has been reached as a result of the ubiquity of teachings where elements are disposed in pockets of a wrapped cover, and the ubiquity of teachings where insulation members are disposed in an overlapping arrangement. However, despite the ubiquity of these general teachings, it is also the examiner's belief that to apply both teachings to the prior art reference disclosed in the background of Mykleby *in a single rejection* under 35 U.S.C 103(a) would necessarily cross the line into hindsight.

In greater detail, the prior art recitation disclosed by Mykleby that is relied upon as the base reference for the rejections (in his background, page 1, lines 45-55, as well as in col. 4, lines 49-53) is admittedly slim. And, once again, the teachings relied upon are only general in nature and have not even come from same general field (protective covers) as the present invention, let alone from the more specific field of protective covers for a reel, or from the exact field of endeavor of the present invention of protective covers for a reel of optical fibers. Were these teachings more than just general teachings, they would likely be seen in a different light. As it is, there would certainly be strong arguments to be made why the application of such general teachings would be impermissible in a 35 U.S.C 103(a) rejection under the principle of non-analogous art.

Accordingly, with this understanding in place, it is the opinion of the examiner that only though hindsight afforded by the disclosure of the present application would one of ordinary skill in the art apply under 35 U.S.C 103(a) both of these very general teachings simultaneously to the base references to Mykleby to reject the present claims.

For that reason, the claims are allowable over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JDJ



Mickey Yu  
Supervisory Patent Examiner  
Group 3700